

Message

From: Capp, James [James.Capp@dnr.ga.gov]
Sent: 9/12/2018 9:53:13 PM
To: Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]
CC: Wetherington, Michele [Wetherington.Michele@epa.gov]; Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]
Subject: RE: Can you please call me

Thanks, that's very helpful.

Is this correct?

"It is important that the two parts of the submittal be separable. By separable, EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated. See *Bethlehem Steel Corp. v. Gorsuch*, 742 F. 2d 1028 (7th Cir. 1984); *Indiana and Michigan Elec. Co. v. U.S. E.P.A.*, 733 F. 2d 489 (7th Cir. 1984). For example, EPA cannot approve part of a submittal that specifies control measures and disapprove the part that specifies the test methods associated with those control measures. The EPA has frequently taken a partial approval approach in the past to process groups of rules that are submitted together. The EPA can approve some of the rules and disapprove the rest as long as the rules that are disapproved do not affect those that are approved."

From: Gettle, Jeaneanne [mailto:Gettle.Jeaneanne@epa.gov]
Sent: Wednesday, September 12, 2018 5:27 PM
To: Capp, James
Cc: Wetherington, Michele; Gordon, Lisa Perras
Subject: RE: Can you please call me

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Jac,

Thanks. We are looking at these dates and will get back to you. With regard to the partial approval/partial disapproval – here is our basis:

Case Law: The relevant case, "*Bethlehem Steel Corp. v. Gorsuch*" (7th Cir. 1984), held that the EPA must follow statutory procedures to promulgate a more stringent regulation rather than use a partial approval to revise a regulation to be more stringent than the state intended. This decision has been followed in other circuits, including the 3rd, 5th, 6th, 7th, 9th, and D.C. The court held that the EPA has the authority to approve some revisions and disapprove others, rather than having to approve or disapprove the whole package. When dealing with a single regulation, the EPA can approve part and disapprove part provided the effect is just to prevent the state from weakening its previous regulation. Even if the effect is to strengthen it, the EPA has not exceeded its authority if it can show that the increase in the stringency of regulation is apparent rather than real, or if real is minor.

Michele Wetherington is our attorney on this matter and will be with us on the next call. If you would like for her to discuss this matter with your attorney in advance, just let us know.

thanks

Jeaneanne

From: Capp, James [mailto:James.Capp@dnr.ga.gov]
Sent: Wednesday, September 12, 2018 4:54 PM
To: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>
Subject: RE: Can you please call me

Thanks for the call today Jeaneanne. Based on the conversation we had, EPA is agreeable to a conference call the week of September 24th so that our relevant personnel are available to discuss this issue. I haven't had a chance to check w/ staff yet but the following times would work for me:

Sep 25: anytime
Sep 26: 3pm or later
Sep 27: 11am-2pm or 4pm
Sep 28: anytime

I also gave Rick a heads up that Trey would be reaching out to him on this matter.

From: Gettle, Jeaneanne [<mailto:Gettle.Jeaneanne@epa.gov>]
Sent: Wednesday, September 12, 2018 2:37 PM
To: Capp, James
Subject: Can you please call me

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jac,

Can you please call me about the Water Quality Standard Revision submitted on August 8. I need to discuss the proposed change with you. I also want to give you a heads up that I believe Trey is going to reach out to Rick on this matter.

My cell is 404-861-6726 and my office phone is 404-562-8979.

Thanks
jeaneanne